

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Test Suit No.2 of 1995**

**With**

**Interlocutory Application No. 7947 of 2016**

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Rash Bihari Singh

.... .... Plaintiff/s

Versus

Smt.Kiran Prakash

.... .... Defendant/s

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**Appearance :**

For the Applicant/s : Mr.Raj Shekhar, Advocate

For the Defendant/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA**  
**ORAL ORDER**

13 09-12-2016

**Re: I.A.No. 7947 of 2016**

The instant Interlocutory Application has been filed under Order XIII Rule 9 (1) of the Code of Civil Procedure (in short, "CPC") on behalf of one Smt. Manna Rani Singh, claiming to be the widow of Rash Bihari Singh, the original petitioner of Test Case No. 03 of 1992, which was subsequently converted into Test Suit No. 02 of 1995.

The learned counsel appearing on behalf of the applicant submits that the aforesaid test suit was ultimately dismissed in the year 1997 on account of non-payment of Probate Duty; therefore, the Will executed in favour of aforesaid Rash Bihari Singh, the plaintiff, could not be probated. He further submits that the original petitioner/plaintiff Rash Bihari Singh died on 07.12.2003 and test suit was dismissed on 17.01.1997 on account of non-compliance of the peremptory order dated 20.12.1996 regarding filing of the Probate Duty. It is contended that in view of dismissal of test suit and in view of death of the original plaintiff, the applicant has filed the present Interlocutory Application praying therein that appropriate direction may be



issued to the registry of this Court for returning the original Will executed by testator in favour of the aforesaid plaintiff.

On examination of the record of original Test Case No. 3 of 1992, giving rise to Test Suit No. 02 of 1995, it appears that the original Will was filed in a sealed cover by the original petitioner/plaintiff, which was kept in safe custody of the Joint Registrar of this Court. This Court further finds that in view of caveat filed by the near relatives, the Test Case was converted into Test Suit by order dated 24.01.1995. This Court also finds that by order dated 12.07.1996 the plaintiff was directed to deposit Probate Duty of Rs.30,000/- within a period of four weeks. The order dated 12.07.1996 was subsequently extended by order dated 20.12.1996 for a further period of four weeks. The order dated 20.12.1996 was peremptory in nature. Despite the aforesaid indulgence granted by this Court, the Probate Duty was not filed by the plaintiff, as a result of which test suit stood dismissed on account of non-compliance of the court's aforesaid peremptory order on 17.01.1997.

The learned counsel appearing on behalf of the applicant has fairly conceded that the order of dismissal of the Test Suit has attained its finality, as the restoration petition was also dismissed. According to him, the applicant, being the widow of the plaintiff, is entitled to get back the original Will, which is unnecessarily lying in the registry of this Court. In support of his above contention, he has placed reliance upon the provisions of Order XIII Rule 9 (1) CPC.

Admittedly, the learned counsel of the applicant has not served a copy of the present Interlocutory Application upon any of the near relatives or the caveators. On close scrutiny of the



provisions of Order XIII Rule 9 (1) CPC, it is apparent that any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, then that document can be returned, unless the document is impounded under rule 8. So far the present applicant is concerned, indisputably, she had not filed the Will in question. Therefore, she cannot get the benefit of the provisions of Order XIII Rule 9 (1) CPC.

Furthermore, the original petitioner/plaintiff was alive till 2003 according to the submissions of the learned counsel for the present applicant, but during the life time of the original petitioner/plaintiff, no such petition was filed by him. In the opinion of this Court, in view of dismissal of the test suit, the Will in question has practically become useless. Whether the applicant is the widow of the original petitioner/plaintiff or somebody else, it can't be examined in the present proceeding particularly in absence of caveators/near relatives. It would also be relevant to consider the provisions of the last proviso of Order XIII Rule 9 (1) CPC, which provides that no document shall be returned which, by force of the decree, has become wholly void or useless.

In view of dismissal of the aforesaid test suit, the Will in question has practically become useless.

In that view of the matter, this Court is not inclined to accede to the prayer made on behalf in the present applicant. The present Interlocutory Application is devoid of merits and is, accordingly, dismissed.

**(Birendra Prasad Verma, J)**

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